Re Fadzil bin Othman, ex p Malayan Banking Bhd

HIGH COURT (MUAR) — BANKRUPTCY PETITION NO 29–289–92
RICHARD TALALLA J
21 FEBRUARY 1993

Bankruptcy *— Act of bankruptcy — Date of commission — Service of notice — Time for compliance by judgment debtor — Whether exclusive of day of service — Bankruptcy Rules 1969 Form 5 of the Appendix*

A bankruptcy notice was served by the petitioning creditor on 8 June 1992. In the bankruptcy petition, it was stated that the act of bankruptcy was committed on 15 June 1992. The representative of the Official Assignee argued that this was incorrect as the bankruptcy notice stated that the time for compliance by the judgment debtor was within seven days after the service of this notice, excluding the day of such service. This was in accordance with Form 5 of the Appendix to the Bankruptcy Rules 1969 which must be used as provided for in r 4 of the Bankruptcy Rules 1969.

Held, dismissing the petition:
The petition was incorrect. As Form 5 had been used, time for compliance had to be exclusive of the day of service. Section 54(1)(a) of the Interpretation Acts 1948 and 1967 also supports this view.

[Bahasa Malaysia summary

Suatu notis kebankrapan telah disampaikan kepada pemiutang pempetisyen pada 8 Jun 1992. Di dalam petisyen kebankrapan itu, telah dinyatakan bahawa perbuatan kebankrapan itu dilakukan pada 15 Jun 1992. Wakil Pegawai Pemegang Harta berhujah bahawa ini tidak betul kerana notis kebankrapan menyatakan masa untuk pematuhan oleh penghutang kehakiman sebagai tujuh hari selepas notis itu disampaikan, tidak termasuk hari penyampaian itu. Ini adalah menurut Borang 5 dalam Lampiran kepada Kaedah-Kaedah Kebankrapan 1969 yang semestinya digunakan sebagaimana yang telah diperuntukkan oleh k 4 Kaedah-Kaedah Kebankrapan 1969.

Diputuskan, menolak petisyen itu:
Petisyen itu tidak betul. Oleh kerana Borang 5 telah digunakan, masa untuk pematuhan semestinya tidak termasuk hari penyampaian. Seksyen 54(1)(a) Akta Tafsiran 1948 dan 1967 juga menyokong pandangan ini.]

Notes
For cases on acts of bankruptcy, see 1 *Mallal's Digest* (4th Ed) paras 944–958; and [1990] Mallal's Digest 48–49.

Cases referred to

1 *Re Dr G Gopala Krishnan* [1992] 1 CLJ 709 (not folld)
2 *Re Saloma & Co, ex p Ipoh Radio Co* [1963] MLJ 46 (refd)
3 *Re Dato' Loh Fook Yen, ex p Malayan United Finance Bhd* [1988] 3 MLJ 499 (refd)

Legislation referred to

Bankruptcy Rules 1969 Form 5 of the Appendix

Lawrnee Gnanapragasam (*CC Aiyathurai & Co*) for the judgment creditor.

Richard Talalla J: In this bankruptcy petition it is stated that the act of bankruptcy was committed on 15 June 1992, the bankruptcy notice having been served on 8 June 1992. The representative of the official assignee drew the court's attention to the incorrectness of that statement, saying that by reference to s 3(1)(i) of the Bankruptcy Act 1967, a debtor commits an act of bankruptcy if he does not within seven days after service of the bankruptcy notice either comply with the requirements of the notice or satisfy the court that he has a counterclaim, set off or cross demand. Counsel for the petitioning creditor disagreed and looked for support to the case of *Re Dr G Gopala Krishnan*.[1] The representative, by way of reply, drew the court's attention to the wording of the bankruptcy notice which was in Form 5 of the Appendix to the Bankruptcy Rules 1969, the wording being 'within seven days after service of this notice on you excluding the day of such service'. Rule 4 of the Bankruptcy Rules 1969 provides that the forms in the Appendix shall be used. Form 5 having therefore been accordingly used, the view I take is that time for compliance by the judgment debtor had to be exclusive of the day of service. Further support for this view is obtained from s 54(1)(a) of the Interpretation Acts 1948 and 1967 wherein it is provided that in computing time for the purpose of any written law, a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done. The case law also supports the view. See *Re Saloma & Co, ex p Ipoh Radio Co*[2] and *Re Dato' Loh Fook Yen, ex p Malayan United Finance Bhd*.[3] Accordingly, I respectfully decline to follow the decision in the *Gopala Krishnan* case.[1] I find the petition is incorrect. Any act of bankruptcy had necessarily to take place on 16 June 1992. The petition is dismissed.

Petition dismissed.

Reported by Jeanne Tan